

**MINUTES OF FORENSIC LABORATORY ADVISORY COMMITTEE (FLAC)
MEETING**

Tuesday, August 27, 2013 10:00 A.M. – 11:00 A.M.

Maryland State Police Forensic Sciences Division Laboratory
221 Milford Mill Road
Pikesville, MD 21208

Members in Attendance:

Theresa DeAngelo, OHCQ Coordinator of Forensic Laboratories Program, (for Patricia Nay, M.D., Executive Director, OHCQ (Chairperson))
Yale Caplan, Ph.D., American Academy of Forensic Sciences (2015)
Irvin Litofsky, Director, Baltimore County Police Dept. Forensic Services Section (2015)
Francis Chiafari, Director, Baltimore City Police Dept. Laboratory (2013)
Teresa Long, Director, Maryland State Police Forensic Sciences Division (2014)
Karin Athanas, American Association for Laboratory Accreditation (A2LA) (2014)
Elissa Passiment, American Society for Clinical Laboratory Science (2015)
Kimberly E. Walker, Ph.D., American Society of Microbiology, University of Maryland School of Medicine (2013)

Members Unable to Attend:

Patricia Nay, M.D., Executive Director, OHCQ (Chairperson)
Robert Myers, Ph.D., DHMH Director of the Laboratories Administration, Ex officio
Richard S. Frank, ASCLD/LAB (2013)

DHMH Staff:

Renee Webster, OHCQ, Assistant Director OHCQ
Maris Jaunakais, OHCQ Forensic Laboratory Surveyor

Non-Members in Attendance:

Allen Hafner, Fingerprint Examiner, Forensic Services Section, Howard County Police Dept.
Pamela Shaw, QA Manager, Baltimore City PD Laboratory
Annette Box, Director, Anne Arundel County Police Dept. Crime Laboratory
Ray Wickenheiser, Director, Montgomery County Police Dept Laboratory
Jacqueline Raskin-Burns, QA Manager, Montgomery County Police Dept. Laboratory
Lynnett Redhead, DNA Technical Leader, Prince George County Police Dept. Laboratory
Wanda Kuperus, QA Manager, Maryland State Police Forensic Sciences Division
William T. Vosburgh, D.D.S., Director, Prince George County Police Dept. Laboratory
Daniel Katz, Assistant Director, Maryland State Police Forensic Sciences Division
Cassandra Burke, QA Manager, Baltimore County Police Dept. Forensic Services Section
Jeffrey G. Cover, Director, Anne Arundel County Police Dept. Identification/Crime Scene Section
Steve O'Dell, Deputy Director, Baltimore City Police Dept. Laboratory

Quorum was established with 8 of 10 FLAC members in attendance.

AGENDA

I. Welcome and General Announcements

Acting Chairperson Theresa DeAngelo, OHCQ (Office of Health Care Quality) Coordinator of Forensic Laboratories Program, welcomed attendees, introduced herself and identified her position with the OHCQ, and commenced the meeting at 10:05 A.M. The 22 attendees introduced themselves and identified the agency with which they are employed. Theresa also announced that Dr. Tricia Nay has been officially named the Executive Director of the Department of Health and Mental Hygiene's OHCQ.

No comments or objections were raised to the minutes of the April 26, 2013 FLAC and the minutes were accepted.

A. FLAC Members who need to be Re-appointed in September 2013

The three (3) year terms for Francis Chiafari, Director Baltimore City Police Dept. Laboratory (2013), Kimberly E. Walker, Ph.D., American Society of Microbiology, University of Maryland School of Medicine (2013), and Richard S. Frank, ASCLD/LAB (2013), as FLAC Committee Members will expire September 2013. Theresa DeAngelo will be in contact via email with these three individuals regarding the re-appointment process. Forms needed to be completed for reappointment were passed out to those individuals in attendance. Completed forms will be sent to Kim Bennardi, Administrator, Office of Appointments and Executive Nominations, Department of Health and Mental Hygiene, 201 W. Preston Street, 5th Floor, Baltimore, MD 21201. Office: 410-767-4049, Fax: 410-333-7687, E-mail: kim.bennardi@maryland.gov

II. MD Drug Chemistry Workgroup – Update

A. Public Comment Period for Changes to 10.10.09 - Aug. 23- Sept. 23, 2013

A copy of the proposed language change for COMAR 10.10.09 agreed to by the MD Drug Chemistry Workgroup was published in the Maryland Register August 23, 2013. The Proposal as published was disseminated to attendees. The public comment period ends September 23, 2013. Everyone can access this language proposal at the website <http://www.dsd.state.md.us/> through the link MD Register Online. Any comments regarding this proposal must be sent to Michele A. Phinney, Director, Office of Regulation and Policy Coordination, Department of Health and Mental Hygiene, 201 West Preston Street, Room 512, Baltimore, MD 21201, or call 410-767-6499 (TTY 800-735-2258), or email to dhmh.regs@maryland.gov, or fax to 410-767-6483.

B. Next Meeting Scheduled during Public Comment Period in September 2013

The next meeting of the MD Drug Chemistry Workgroup is to be held in September before the end of the comment period.

III. Proficiency Test Review and Annual Audit Review

A. Suggestions from FLAC Members- Annual Lab Visits by OHCQ

Suggestions were solicited from attendees for conducting on-site Proficiency Test and Annual Audit Reviews. The reviews at each laboratory are expected to be finished within one day.

B. Start date of OHCQ Single Day Laboratory Review/Visit

The Proficiency Test and Annual Audit Reviews will begin after Labor Day 2013. Each accredited laboratory will be contacted and a mutually agreeable date to perform the reviews will be determined. For those laboratories that are not accredited, on-site inspections have already been completed by OHCQ for 2013.

IV. Workgroups for Other Disciplines

With the success that the Drug Chemistry Workgroup has had in addressing common issues experienced by MD laboratories, the question was asked whether it would be worthwhile to establish other subgroups of FLAC. Is there a need to establish subgroups in Trace Evidence, DNA, Latent Prints, or another forensic discipline? What is the purpose of the subgroup(s)? A comment was made that there are no state regulations either supporting or restricting the formation of subgroups.

A strong case for having a Latent Print Subgroup was made because of recent challenges made in the courtroom by the Office of the Public Defender's (OPD) in Prince George County. Among other considerations, the OPD had argued to the court that evidence was destroyed inappropriately when the case Latent Print (LP) Examiner had discarded 9 of the top ten (10) MAFIS matches. It would be beneficial if LP Examiners at all state labs have the opportunity to discuss these types of defense challenges, anticipate them, and be better prepared to respond to them in courts of law. In the Prince George County case, the Laboratory Director had to testify to counter the OPD challenges.

It was noted that the examiners in the Trace Evidence Section of MD State Laboratories are a small group and regularly discuss issues. Even the recent publically reported Hair and Fiber problems in the FBI Forensic Laboratory have been discussed. ASCLD-LAB has sent out notices regarding these trace evidence concerns to labs and States Attorneys have been informed. NIJ has also become involved.

V. Questions/ Issues Not Discussed

A. The accrediting bodies communicate with the laboratories about Proficiency Testing matters. The question was asked does OHCQ want these communication documents for review. OHCQ

will be conducting the one day on-site Proficiency Test and Annual Audit Reviews, where those documents will be reviewed.

B. There were extensive discussions about the cross-walk documents between accrediting organizations and the OHCQ. The cross-walk documents are those additional inspection items that go beyond the accrediting body's core requirements. The cross-walk documents are incorporated, confidential, copyright protected documents and only those laboratories that are accredited by an accrediting organization are provided a copy of that organization's crosswalk agreements. If a laboratory wants to receive cross-walk documents from any additional accrediting organizations beyond the laboratory's current accrediting organization, then each additional accrediting organization/ body needs to be contacted directly by the laboratory.

C. Letter of Permit Exception: Questions were asked about those "experts" who have applied and were granted a Letter of Permit Exception by the OHCQ. In the process of granting this Letter of Permit Exception, the OHCQ reviews the qualifications of the person, education, experience and other supporting information and makes a determination. The Letter of Permit Exception limits the scope of the person's expertise in an appropriate forensic discipline.

The Letter of Permit Exception was established so as not to exclude Public Defender's or other defense expert witness's ability to testify.

A suggestion was made to announce for the benefit of lawyers the Letter of Permit Exception in the Daily Record.

To help clarify some issues, should the regulations include definitions such as "opinion" and/or "consulting?"

A question was asked about the cost of the "Waiver" fee, which is \$50.

VI. Goals and Subject of Next Meeting

Acting Chairperson Theresa DeAngelo suggested having the next FLAC meeting during the first two weeks of January 2014.

VII. Adjournment

A motion was made by Theresa DeAngelo to adjourn the meeting. The motion was approved. The meeting adjourned at 11:00 A.M.